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TIFFANY CHAU v. JABATAN IMIGRESEN MALAYSIA (CAWANGAN PERAK) & ANOR

HIGH COURT MALAYA, IPOH
HASHIM HAMZAH J
[ORIGINATING SUMMONS NO: AA-24NCVC-29-01-2019]
B 18 JUNE 2019

ADMINISTRATIVE LAW: *Remedies – Mandamus – Application for – Issuance of entry permit to American citizen – Whether applicant fulfilled conditions under s. 44 of Specific Relief Act 1950 – Whether applicant had specific legal right to relief*
C *sought – Whether there was any breach of procedural requirements under Immigration Act 1959/63 – Whether application was to compel exercise of power – Whether mandamus can only be issued to enforce performance of public duty – Whether applicant exhausted alternative remedies – Whether application premature*

D The applicant, an American citizen and a student at Monash University Sunway Malaysia, filed the present application for the reliefs, *inter alia*: (i) an order for *mandamus* to issue an entry permit to the applicant by the first respondent; and (ii) an order for *mandamus* against the respondents to consider, allow and endorse the entry permit to the applicant before the citizenship status is awarded to the applicant under art. 19(1) of the Federal
E Constitution ('FC). The applicant's biological mother is a Malaysia citizen and her father is an American citizen. Following the divorce of the applicant's parents, the applicant and her mother came to live in Malaysia. The applicant had been continuously living in Malaysia, under the student's pass for the past 15 years, until the latest student pass which expired on
F 18 March 2019. On 12 September 2018, the applicant went to the entry permit division of the first respondent's office to apply for an entry permit. On the same day, the first respondent's officer informed the applicant and her mother that the applicant only obtained 35 out of 120 marks, to which the passing mark is 65. The first defendant issued a letter to the applicant
G regarding the rejection of the applicant's application for the said entry permit. The applicant was dissatisfied with the decision of the first respondent's Head of Visa, Pass and Permit Division and filed an appeal to the second respondent, which was pending decision. The issues for the court's determination herein were: (i) whether the applicant had fulfilled the
H conditions for a *mandamus* order under s. 44 of the Specific Relief Act 1950 ('SRA'); (ii) whether the applicant's deposition at para. 5 of the applicant's affidavit-in-support was hearsay evidence; and (iii) whether the respondents were correctly named.

Held (dismissing application with no order as to costs):

I **(1)** There are two limbs to the proviso under s. 44(1)(a) of the SRA and the first limb is that the applicant must show that she had a specific legal right to the relief sought. The applicant's application to the first respondent's office was governed by 'Pekeliling Imigresen Malaysia

Terhad Bil 3 Tahun 2010 – Garis Panduan Permohonan Permit Masuk Mengikut Kaedah Sistem Mata ('point system') dated 1 July 2010 ('Circular'). The facts clearly showed that the applicant did not achieve the passing mark of 65 as required under para. 4.5 of the Circular. It was not shown that the grading of the applicant's mark was done in contravention with the Circular. There was nothing in the applicant's affidavit evidence to show that there was any breach of procedural requirements in the exercise of the first respondent's discretion under ss. 3(2), 10 and 13 of the Immigration Act 1959/63 ('Immigration Act') as all the standard operating procedures under the Circular had been complied with. (paras 20, 21, 24, 25 & 27)

(2) The second limb to be satisfied by the applicant under s. 44(1)(a) of the SRA was that the applicant's injury will result from the forbearing or doing of a statutory duty by a person who holds public office. It is trite that the order of *mandamus* can only be issued to enforce the performance of a public duty where there has been a failure to perform the same. However, it could not be used as a remedy to compel the exercise of a power by any person or authority. The applicant failed to show any failure on the part of the first respondent to perform any statutory duties compelled to them in law. Therefore, the applicant had failed to establish the necessary requirement under s. 44(1)(a) of the SRA. (paras 30-33)

(3) Pertaining to s. 44(1)(d) of the SRA, *ie*, when there is an alternative remedy provided by the law, it was premature to invite the court to review the decision of the respondents. The applicant had not exhausted the remedy under the Immigration Act since the applicant had appealed against the decision of the first respondent to the Minister of Home Affairs which was pending determination. Therefore, the applicant had failed to satisfy the requirement under s. 44(1)(d) of the SRA. (paras 35, 37 & 40)

(4) The issue of the applicant's right to citizenship under art. 19(1) of the FC was non-existent in this application as the reliefs sought by the applicant were only pertaining to the granting of entry permit by the respondents and nothing involving the grant of citizenship to the applicant. The power to grant citizenship lies with the Federal Government and the Minister of Home Affairs and both were not named as parties in the application. As such, there was no apparent need to address any submissions on this issue. (paras 41-43)

(5) The applicant's deposition at para. 5 of the applicant's affidavit-in-support was made in contravention with O. 41 r. 5(1) of the Rules of Court 2012. An affidavit must contain facts that the deponent, to his own knowledge, is able to prove. The facts deposed therein could only be verified by the applicant's mother since the applicant had no direct

knowledge regarding what actually transpired. In the circumstances, there was no weight given to the applicant's deposition in para. 5 of the applicant's affidavit in support for being purely hearsay evidence. (paras 44, 45 & 47)

(6) This application was filed against the respondents, *ie*, Jabatan Imigresen Malaysia (Cawangan Perak) and Kementerian Dalam Negeri Malaysia, which were not entities recognised by the relevant laws. The applicant did not apply to amend the parties to the present application, hence, the applicant's application was doomed to fail from the very beginning. (paras 48 & 49)

Case(s) referred to:

Bencon Development Sdn Bhd v. Majlis Perbandaran Pulau Pinang & Ors [1999] 8 CLJ 37 HC ***(refd)***

Ho Kooi Sang v. Universiti Malaya [2004] 5 CLJ 445 HC ***(refd)***

Ketua Pengarah Hasil Dalam Negeri v. Alcatel-Lucent Malaysia Sdn Bhd & Anor [2017] 2 CLJ 1 FC ***(refd)***

Koon Hoi Chow v. Pretam Singh [1972] 1 LNS 56 HC ***(refd)***

Menteri Besar Negeri Pahang Darul Makmur v. Seruan Gemilang Makmur Sdn Bhd [2010] 5 CLJ 123 CA ***(refd)***

Metal Industry Employees Union v. Registrar Of Trade Unions & Ors [1975] 1 LNS 104 FC ***(refd)***

Ooman Chung v. Director Of Lands And Surveys, Sabah & Anor [2015] 10 CLJ 85 CA ***(refd)***

Pengarah Kastam Negeri Johor & Anor v. Kedai Makan Kebun Teh (Sutera Utama) Sdn Bhd & Ors And Another Appeal [2014] 3 CLJ 733 CA ***(refd)***

Pua Kiam Wee v. Ketua Pengarah Imigresen Malaysia & Anor [2018] 4 CLJ 54 CA ***(refd)***

Ringgit Exoticka Sdn Bhd v. Pengarah Tanah & Galian Selangor & Ors [2013] 10 CLJ 663 HC ***(refd)***

Robin Tan Pang Heng v. Ketua Pengarah Kesatuan Sekerja Malaysia & Anor [2010] 9 CLJ 505 FC ***(refd)***

Robin Tan Pang Heng Abdullah (Mendakwa Sebagai Pegawai Awam Penang Turf Club) v. Ketua Pengarah Kesatuan Sekerja Malaysia & Anor [2010] 5 CLJ 574 CA ***(refd)***

Selvaraju Ponniah v. Suruhanjaya Perkhidmatan Awam Malaysia & Anor [2007] 6 CLJ 245 FC ***(refd)***

Semantan Estate [1952] Sdn Bhd v. Collector Of Land Revenue Wilayah Persekutuan [1987] 2 CLJ 199; [1987] CLJ (Rep) 329 SC ***(refd)***

Vestime Corporation Sdn Bhd v. YBLE Resources Sdn Bhd & Ors [2006] 2 CLJ 196 HC ***(refd)***

Legislation referred to:

Federal Constitution, art. 19(1)
Immigration Act 1959/63, ss. 3(2), 10, 13, 59A(1), (2)
Rules of Court 2012, O. 41 r. 5(1)
Specific Relief Act 1950, s. 44(1)(a), (d)

For the applicant - Dasuki Mat Noh; M/s Amin Amirul & Partners
For the respondent - Maisarah Juhari; SFC

Reported by S Barathi

JUDGMENT

Hashim Hamzah J:

Introduction

[1] This is the hearing of the applicant's application *vide* originating summons dated 23 January 2019 for the following reliefs, namely:

(i) an order of *mandamus* to issue an entry permit to the applicant by the first respondent;

(ii) an order of *mandamus* against the respondents to consider, allow and endorse the entry permit to the applicant before the citizenship status is awarded to the applicant under art. 19(1) of the Federal Constitution;

(iii) an order of *mandamus* against the respondents or any other public authorities to take action which is reasonable in order to execute the order of this court;

(iv) any other order that is deemed fit by this court; and

(v) costs in the cause.

Brief Facts

[2] Briefly, the facts in the present case are as follows.

[3] The applicant was born in Santa Rosa, California, the United States on 25 September 1993. The applicant is an American citizen and is currently a holder of U.S. Passport No: 488925315 which expires on 6 December 2021.

[4] The applicant is currently 26 years old. She was a student at Monash University Sunway Malaysia. She was holding a Malaysian Student's Pass No: PD9977716 which expired on 18 March 2019.

[5] The applicant's biological mother is Teoh Jyr Ling, a Malaysian citizen whereas the applicant's father, Yat Chuen Chau, is an American citizen. They were married on 19 June 1990.

[6] The applicant's parents were officially divorced on 19 January 2010. The applicant together with her mother came to live in Malaysia since then. The applicant had been continuously living in Malaysia under the student's pass (for various schools and tertiary education centers) for the past 15 years until the latest student's pass which expired on 18 March 2019.

[7] On 12 September 2018, the applicant went to the Entry Permit Division of the first respondent's office to apply for an entry permit. On the same day itself, after the filing of the applicant's application, the first respondent's officer informed the applicant and her mother that the applicant only obtained 35 out of 120 marks, to which the passing mark is 65 marks.

[8] The applicant had also filed an application for entry permit to the federation, to which the Royal Malaysian Police of Perak wanted to conduct an interview with the applicant and her mother but to no avail as the address provided by the applicant was empty and the telephone number provided by the applicant was uncontactable.

[9] A letter dated 3 October 2018 was issued by the first defendant to the applicant regarding the rejection of the applicant's application for the said entry permit.

[10] The applicant was dissatisfied with the decision of the first respondent's Head of the Visa, Pass and Permit Division and filed an appeal to the second respondent *vide* a letter dated 18 October 2018 and 20 December 2018.

[11] As of now, the applicant's appeal to the second respondent is still pending decision.

[12] On 23 January 2019, by way of an originating summons, the applicant filed this application for the determination of this court.

Issues

[13] The issues raised by the parties in the present case can be summarised as follows:

(i) whether the applicant has fulfilled the conditions for a *mandamus* order under s. 44 of the Specific Relief Act 1950 (Revised 1974) (Act 137) ("SRA 1950");

(ii) whether the applicant's deposition at para. 5 of the applicant's affidavit in support affirmed on 23 January 2019 ("applicant's affidavit in support") is hearsay evidence; and

(iii) whether the respondents were correctly named in the present case.

Law

[14] First and foremost, the enforcement of public duties by the courts is governed under Chapter VII of Part 2 of SRA 1950. In particular, s. 44 of SRA 1950 provides as follows:

> Section 44. Power to order public servants and others to do certain specific acts.
>
> (1) A Judge may make an order requiring any specific act to be done or forborne, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or any court subordinate to the High Court:
>
> *Provided that:*
>
> (a) *an application for such an order be made by some person whose property, franchise, or personal right would be injured by the forbearing or doing, as the case may be, of the said specific act;*

(b) such doing or forbearing is, under any law for the time being in force, clearly incumbent on the person or court in his or its public character, or on the corporation in its corporate character;

(c) in the opinion of the Judge the doing or forbearing is consonant to right and justice;

(d) **the applicant has no other specific and adequate legal remedy; and**

(e) the remedy given by the order applied for will be complete.

(2) Nothing in this section shall be deemed to authorise a Judge:

(a) to make any order binding on the Yang di-Pertuan Agong;

(b) to make any order on any servant of any Government in Malaysia, as such, merely to enforce the satisfaction of a claim upon that Government; or

(c) to make any order which is otherwise expressly excluded by any law for the time being in force.

(emphasis added)

[15] Plain reading of s. 44(1) of SRA 1950 clearly provides that the five conditions laid out under the provisos to the said provision, must be fulfilled by the applicant before a *mandamus* order can be granted by the court.

[16] The same view was observed in the case of *Koon Hoi Chow v. Pretam Singh* [1972] 1 LNS 56; [1972] 1 MLJ 180 in which Sharma J (as he then was) held as follows:

> Five conditions are laid down in section 44 and these conditions are the five provisos contained in the section which the applicant must satisfy. They are cumulative and all of them must be fulfilled. The question therefore is whether the applicant has succeeded in bringing his case within the purview of section 44 of the Specific Relief Ordinance.

First Issue: Whether The Applicant Have Fulfilled The Conditions For A Mandamus Order Under Section 44(1) of SRA 1950

[17] The pertinent issue in the present application is whether the plaintiff had successfully shown that all the conditions under s. 44(1) of SRA 1950 have been fulfilled so as to allow this court to grant a *mandamus* order as prayed.

[18] In addressing this issue, reference is again made to the case of *Koon Hoi Chow v. Pretam Singh* (*supra*) where it was held as follows:

> There are four prerequisites essential to the issue of an order under section 44 or of a *mandamus*:
>
> (1) Whether the applicant has a clear and specific legal right to the relief sought;
>
> (2) Whether there is a duty imposed by law on the respondent;

(3) Whether such duty is of an imperative ministerial character involving no judgment or discretion on the part of the respondent; and

(4) Whether the applicant has any remedy, other than by way of *mandamus*, for the enforcement of the right which has been denied to him.

[19] In the present application, the learned Senior Federal Counsel ("SFC") for the respondents mainly submitted that the applicant had failed to satisfy two of the conditions set out under s. 44(1)(a) and 44(1)(d) of SRA 1950 respectively, where:

(i) the applicant failed to show that the applicant's property, franchise, or personal rights would be injured if the respondents failed to carry out its statutory duties as prescribed under the law; and

(ii) there were other specific and adequate legal remedies which had not been exhausted by the applicant.

Section 44(1)(a) Of SRA 1950

[20] With regard to the first condition, ie, under s. 44(1)(a) of SRA 1950, I am of the considered opinion that there are two limbs to this proviso.

[21] The first limb is that the applicant must show that she has a specific legal right to the relief sought. In the Supreme Court case of *Semantan Estate [1952] Sdn Bhd v. Collector Of Land Revenue Wilayah Persekutuan* [1987] 2 CLJ 199; [1987] CLJ (Rep) 329, it was held as follows:

> Then there is the important question of the appellant's standing. **He must have a specific legal right to ask the Court to exercise its discretion to issue the order of *mandamus***. Such discretion must be exercised judicially. **If the appellant has no such right then he is not entitled to *mandamus***. As has been pointed out he has a right of appeal against the decision of the High Court in refusing to hear the reference. **He has failed to avail himself of the alternative remedy**. This point was not seriously contended by the parties before the learned Judge. We think it is too late for him to say he had no alternative remedy. **Accordingly, we are of the view that he has no specific legal right to apply for *mandamus* in this case**.
>
> (emphasis added)

[22] See also the High Court case of *Ho Kooi Sang v. Universiti Malaya* [2004] 5 CLJ 445 on the same issue.

[23] Coming back to the present application, the learned SFC submitted that the applicant has no specific legal right to the relief sought in the present application since any decision of the Minister or the Director General of Immigration under s. 59A(1) of the Immigration Act 1959/63 (Act 155) ("Immigration Act 1959/63") cannot be reviewed or appealed at all unless it can be shown that there is a non-compliance with procedural requirements

of the Immigration Act 1959/63 or the regulations governing that act or decision. This includes an application for a *mandamus* order (s. 59A(2) of Immigration Act 1959/63).

[24] It was further submitted by the learned SFC that the applicant's application to the first respondent's office was governed by a Circular ie, the "Pekeliling Imigresen Malaysia Terhad Bil. 3 Tahun 2010 – Garis Panduan Permohonan Permit Masuk Mengikut Kaedah Sistem Mata (Point System)" dated 1 July 2010 ("the said Circular").

[25] The facts in the present application clearly show that the applicant did not achieve the passing mark of 65 as required under para. 4.5 of the said Circular. Nothing was shown that the grading of the applicant's marks was done in contravention with the said Circular (as can be seen from exh. K1-4 in the respondents' affidavit in reply affirmed on 11 March 2019).

[26] In fact, learned counsel for the applicant merely contended that the discretionary power of both the respondents to analyse, evaluate and determine the relevant issues relating to the application was misused and unconstitutionally applied without pointing any flaw in the decision-making process.

[27] I find that there was nothing in the applicant's affidavit evidence to show that there was any breach of procedural requirements in the exercise of the first respondent's discretion under ss. 10, 13, 3(2) of the Immigration Act 1959/63 as all the standard operating procedures under the said Circular had been complied with.

[28] In the case of *Pua Kiam Wee v. Ketua Pengarah Imigresen Malaysia & Anor* [2018] 4 CLJ 54; [2017] MLJU 902, the Court of Appeal had in no uncertain terms held that:

> [14] Thus, the effect of the ouster provision as provided in section 59A has excluded judicial review of the act of the first respondent in making the impugned decision, by stripping the court of its supervisory judicial function. Parliament having excluded judicial review under Act 155, it is not permissible for the court to intervene and disturb a statutorily unreviewable decision (*Sugumar*).

[29] The applicant also did not plead that the said Circular contravened any provision of the Immigration Act 1959/63 so there is no apparent need for this court to consider such matter. In the case of *Ooman Chung v. Director Of Lands And Surveys, Sabah & Anor* [2015] 10 CLJ 85; [2015] MLJU 2237 the Court of Appeal held as follows:

> [52] We had also examined each and every affidavit filed by the applicant in the High Court, the notes of proceedings in the High Court, and the written submissions for the applicant in the High Court. We noted that the issue of non-compliance with section 6 of the LAO was never raised in the High Court. That explained the absence of any reference to this issue in the judgment of the learned Judicial Commissioner.

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> [53] In those circumstances we were of the considered view that the issue of non-compliance with section 6 of the LAO was not an issue that we needed to consider.

[30] Next, the second limb that must be satisfied by the applicant under s. 44(1)(a) of SRA 1950 is that the applicant's injury will result from the
B forbearing or doing of a statutory duty by a person who holds public office.

[31] It is trite that the order of *mandamus* can only be issued to enforce the performance of a public duty where there has been a failure to perform the same. However, it cannot be used as a remedy to compel the exercise of a power by any person or authority (see *Menteri Besar Negeri Pahang Darul*
C *Makmur v. Seruan Gemilang Makmur Sdn Bhd* [2010] 5 CLJ 123; [2010] 4 MLJ 360, CA).

[32] As can be seen above and from the facts of the case, the applicant failed to show any failure on the part of the first respondent to perform any
D statutory duties compelled to them in law. Again, it is important to reiterate that this court cannot be used as a means to compel the exercise of any discretion or judgment on the part of the respondents (*Koon Hoi Chow v. Pretam Singh* (*supra*)).

[33] For the foregoing reasons, I find that the applicant had failed to
E establish the necessary requirement under s. 44(1)(a) of SRA 1950.

Section 44(1)(d) Of SRA 1950

[34] The next issue is whether the applicant had satisfied the requirement under s. 44(1)(d) of SRA 1950, ie, whether the applicant had shown that the
F applicant had no other specific and adequate legal remedy before resorting to this application.

[35] On this issue, it was submitted by the learned SFC, to which I agree that the applicant had not exhausted the remedy under the Immigration Act 1959/63 since the applicant had appealed against the decision of the first
G respondent to Minister of Home Affairs which was pending for determination. This fact was not disputed by the applicant.

[36] The Federal Court in the case of *Ketua Pengarah Hasil Dalam Negeri v. Alcatel-Lucent Malaysia Sdn Bhd & Anor* [2017] 2 CLJ 1; [2017] 1 MLJ 563 had in no uncertain terms held that the right of the applicant to come to court
H only arises once the applicant had availed herself of any remedy laid down by the law. The Federal Court held in the following words:

> [58] To dispel any fear of a taxpayer, merely because he has to face such an awesome body in the form of the government, Gill FJ in *Sun Man Tobacco Co v. Government of Malaysia* [1973] 1 LNS 144; [1973] 2 MLJ 163
I had occasion to state:
>
> > The doors of justice are not shut to him merely because its claimant is the Government, but he has to enter the doors of the Special Commissioners first to raise the plea of non-observance of

> the principle of natural justice or to establish that the Director-General acted arbitrarily and in a non-judicial manner. **It is only after he has availed himself of that remedy as laid down by the law that he has a right to come to the courts**.
>
> (emphasis added)

[37] It is also patently clear that when there is an alternative remedy provided by the law, it is premature to invite the court to review the decision of the respondents. In the Court of Appeal case of *Robin Tan Pang Heng Abdullah (Mendakwa Sebagai Pegawai Awam Penang Turf Club) v. Ketua Pengarah Kesatuan Sekerja Malaysia & Anor* [2010] 5 CLJ 574; [2010] 4 MLJ 771, it was held in the following words:

> [24] In fact it is premature to invite the court to review the decision of the first respondent when the provision for appeal against the first respondent to the Minister is comprehensively laid down in the Trade Unions Act 1959. Thus there is no illegality in the action of the first respondent.
>
> [25] Regarding the word 'may' in the relevant provision of the Act, we are of the view that this gives an option to the appellant to appeal to the Minister, rather than giving a right to apply for judicial review when there exists an alternative remedy.

[38] The Federal Court affirmed the decision by the Court of Appeal in the above case, reported as *Robin Tan Pang Heng v. Ketua Pengarah Kesatuan Sekerja Malaysia & Anor* [2010] 9 CLJ 505; [2010] MLJU 1347 in the following words:

> [17] In our opinion the legislation by stipulating that the decision of the Minister is to be final is itself indicative that when there is already stipulated a second tier identified in the legislation, Courts are not authorised to interfere for the statutory right that has accrued is not purely formal but mandatory. In other words the statutory right has to be exhausted.

[39] See also *Metal Industry Employees Union v. Registrar Of Trade Unions & Ors* [1975] 1 LNS 104; [1976] 1 MLJ 220, FC and *Pengarah Kastam Negeri Johor & Anor v. Kedai Makan Kebun Teh (Sutera Utama) Sdn Bhd & Ors And Another Appeal* [2014] 3 CLJ 733; [2014] 4 MLJ 377, CA.

[40] Since the applicant had alternative remedy under the law and had in fact appealed against the decision of the first respondent to the second respondent, I find that the applicant had failed to satisfy the necessary requirement under s. 44(1)(d) of SRA 1950.

The Applicant's Case

[41] The main crux of the applicant's case in the present application revolves around the issue of the applicant's right to citizenship under art. 19(1) of the Federal Constitution.

[42] At this juncture, I agree with the learned SFC that this issue is currently non-existent in the present application since the reliefs sought for by the applicant are only pertaining to the granting of entry permit by the respondents and nothing involving the grant of citizenship to the applicant. I also agree that the power to grant citizenship lies with the Federal Government and the Minister of Home Affairs of whom both were not named as parties to the present application.

[43] As such, I am of the considered view that there is no apparent need for this court to address any submissions on this issue.

Second Issue: Whether The Applicant's Deposition At Paragraph 5 Of The Applicant's Affidavit In Support Is Hearsay Evidence

[44] Another issue raised is whether the applicant's deposition at para. 5 of the applicant's affidavit 1 is hearsay evidence. Paragraph 5 of the applicant's affidavit 1 read as follows:

> 5. Ibu saya pernah beberapa kali ke jabatan imigresen untuk bertanyakan prosedur dan tatacara untuk mendapatkan status kewarganegaraan kepada saya ketika saya masih berumur 12 tahun. Namun jawapan dan informasi yang ibu saya perolehi adalah tidak memuaskan kerana jabatan imigresen menyatakan secara akuan mulut sahaja bahawa saya masih lagi tidak layak secara merit untuk memohon kewarganegaraan. Saya juga tidak diterangkan apakah yang dimaksudkan dengan kelayakan bermerit tersebut. Ibu saya ada juga beberapa kali pergi ke jabatan imigresen selepas itu pada tahun bermula dari 2008, 2011, 2012 dan 2015 namun hasratnya hampa kerana tidak diterangkan secara lanjut dan terperinci tentang prosedur untuk memohon permit masuk sebelum taraf pemastautin tetap dan kewarganegaraan diberikan.

[45] I agree with the learned SFC that this deposition was made in contravention with O. 41 r. 5(1) of the Rules of Court 2012 ("ROC 2012"). An affidavit must contain facts that the deponent to his own knowledge is able to prove. The facts deposed therein can only be verified by the applicant's mother since the applicant has no direct knowledge regarding what actually transpired. This evidence is purely hearsay.

[46] Failure to observe the abovementioned requirement will discard the particular deposition or evidence of any probative value and the impugned statement may be expunged by the court (see *Ringgit Exoticka Sdn Bhd v. Pengarah Tanah & Galian Selangor & Ors* [2013] 10 CLJ 663; [2014] 8 MLJ 111).

[47] As such, in the present application, I give no weight to the applicant's deposition in para. 5 of the applicant's affidavit in support for being purely hearsay evidence.

Third Issue: Whether The Respondents Were Correctly Named In The Present Case

[48] Regarding this issue, I agree with the learned SFC that this application was filed against the respondents ie, Jabatan Imigresen Malaysia (Cawangan Perak) as the first respondent and Kementerian Dalam Negeri Malaysia as the second respondent which were not entities recognised by the relevant laws (see *Selvaraju Ponniah v. Suruhanjaya Perkhidmatan Awam Malaysia & Anor* [2007] 6 CLJ 245; [2007] 7 MLJ 1, *Vestime Corporation Sdn Bhd v. YBLE Resources Sdn Bhd & Ors* [2006] 2 CLJ 196; [2006] MLJU 59, and *Bencon Development Sdn Bhd v. Majlis Perbandaran Pulau Pinang & Ors* [1999] 8 CLJ 37; [1999] MLJU 91).

[49] The applicant did not apply to amend the parties to the present application. Hence, the applicant's application was doomed to fail from the very beginning.

Conclusion

[50] For reasons enumerated above, the applicant's application is hereby dismissed with no order as to cost.